



The Comptroller General
of the United States

Washington, D.C. 20548

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Decision

Matter of: Technology & Management Services, Inc.

File: B-231025.4

Date: June 1, 1988

DIGEST

Dismissal of protest as academic does not provide a basis upon which costs may be awarded since a prerequisite to the award of costs under the Competition in Contracting Act is a decision on the merits of the protest.

DECISION

Technology and Management Services, Inc. (TMS) submits a claim for its proposal preparation costs and the costs of pursuing its protest which we previously dismissed as academic. TMS protested the Department of Energy's allegedly improper evaluation of proposals under solicitation No. DE-RP19-88BC14129 and objected to the award of the contract to another higher priced offeror. After the protest was filed, but before the filing of its protest report, the agency determined that the contract should be terminated and the performance work statement rewritten.

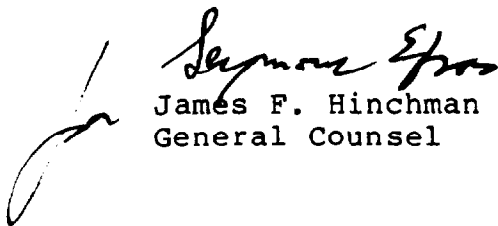
We issued no decision on the merits of TMS' protest, finding it to be academic since the agency had already granted the requested relief. TMS does not question this determination, but requests the reimbursement of its proposal and protest costs. According to TMS, even though the contract was terminated and it will be able to submit an offer under the rewritten solicitation, it should nonetheless be granted its costs.

We disagree. Our authority to allow the recovery of the costs claimed by TMS is predicated upon a determination by our Office that the solicitation, proposed award or award of a contract does not comply with statute or regulation. 31 U.S.C. § 3554(c)(1) (Supp. III 1985); Interstate Diesel Service, Inc., B-230153.2, Apr. 14, 1988, 88-1 CPD ¶ 367. A decision on the merits of a protest is an essential

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condition to a declaration that the protester is entitled to the award of costs. Brownell & Co., Inc., B-225784.4, Aug. 20, 1987, 87-2 CPD ¶ 182; Pitney Bowes, Inc., 64 Comp. Gen. 623 (1985), 85-1 CPD ¶ 696. Since we have made no such determination here, we have no basis for awarding costs to TMS.

The claim is denied.



James F. Hinchman
General Counsel